

Sign-UP

The Connecticut Dermatology and Dermatologic Surgery Society
Connecticut ENT Society
Connecticut Society of Eye Physicians
Connecticut Urology Society

February 19, 2013
Testimony for the Insurance Committee
On

SB 446 AAC CONCERNING HEALTH INSURANCE COVERAGE AND TORT REFORM.

Good morning Senator Crisco, Representative Megna and other distinguished members of the Insurance and Real Estate Committee, my name is Dr. Arthur Tarantino. I am a board certified urologist practicing in Hartford Connecticut. I am the President-elect of the Connecticut Urology Society and I am here representing over 1000 physicians practicing in Urology, Dermatology, Otolaryngology and Ophthalmology to provide insight and I hope clarity on the problems healthcare providers face with regard to the delivery of care in Connecticut.

First, I would like to thank this committee for listening to the concerns of health care providers, and for considering and passing legislation improving the delivery of care to patients in Connecticut. Over the years, physicians have testified before this committee on many issues including standards in contracting, denial of claims, medical loss ratios, and legislation seeking protections for our patients who have been denied health care services, to name a few. The persisting problem of denied services either for pre-existing conditions or for services challenged by the MCO as being "not medically necessary" have resulted in the proliferation of the so-called "mandate" bills, bills that function as band aids by seeking relief for specific health problems, diseases or unique circumstances rather than attempting to fix the problems that gave rise to the need in the first place, which is that non-medical bureaucrats (MCOs) are over-riding a physicians medical decision..

Although some progress has been made in Connecticut on many issues through these efforts and the Affordable Care Act, much more work is needed. We need to consider creative ideas such as those proposed by neurosurgeon Dr. Ben Carson who has recommended that "every child born in the US should receive a medical savings account, which could receive pre-tax contributions. He also said "We can make contributions for people who are indigent. Instead of sending all this money to some bureaucracy, let's put it in their HSAs. Now they have some control over their own health care. And very quickly they're going to learn how to be responsible." This make sense idea of allowing everyone to have skin in the game is gaining phenomenal support as I speak.

I would also like to talk about another piece of the healthcare pie; the dark cloud of medical liability that physicians must work under and, the time physicians lose from their patients fighting these meritless claims (it is estimated that a physician will lose 1 year from their career fighting frivolous lawsuits) and how Connecticut's lack of effective laws in this area will have lasting negative impact on Connecticut citizens for generations to come. The constant threats of frivolous lawsuits and awards that have ballooned into the stratosphere have contributed tremendously to Connecticut's current rating as one of the three worst states to in which to practice medicine.

No matter what side of the aisle you are on, there is no denying that healthcare in the United States is going through drastic changes. Many of the recent changes are related to the Affordable Care Act, but these changes have been felt rippling through the medical community for over a decade. Back in 2005, some of you in this room will recall the white coat rally that brought hundreds of doctors to the capitol looking for medical liability relief as the cost of medical liability coverage skyrocketed, not only in Connecticut but across the country. Many states, including Texas, Florida, Michigan and New York have successfully passed aggressive cost containing medical malpractice legislation to bring relief to the medical community. These states have seen medical practices grow and flourish in an atmosphere that promotes quality care. Unfortunately, Connecticut is still lagging in this area and is considered a professional liability crisis state, with the highest judgments in the country. This environment discourages new physicians from locating in Connecticut, and encourages some of our most seasoned doctors to leave the practice of medicine through early retirement. It also adds to medical costs through the defensive practice of medicine.

Patients who have been injured clearly need access to redress through the courts, but preserving the COM legislation passed in 2005 which requires review by a health care provider who has the expertise to make a fair judgment on the merits of the case before it can proceed is vital. We should not be swayed by the self-serving arguments of the Trial Bar attorneys who have yet to provide a single example of a legitimate case that has been denied its day in court. In addition, caps on awards for non-economic damages, which have helped control liability costs in other states should be enacted in Connecticut. This will help create a medical delivery system able to take care of those entering the health care system through the Affordable Care Act, allowing high quality care for all of the citizens of Connecticut. Thank you

Liability Premiums Soften, but for how long?

Most physicians saw their insurance rate hold steady or decrease in 2012, a new report says. But experts say the market eventually will shift, bringing increases.

CAROLYN KRUPA
AMNEWS STAFF

Small but persistent declines in medical liability insurance premiums have many insurers concerned about the future of their industry. Yet doctors are benefiting from lower rates and rising competition among insurers vying for their business.

Nearly 60% of premiums nationwide held steady in 2012, and about 26% decreased, according to the *Medical Liability Monitor* Annual Rate Survey. Only 15% of premiums increased.

Overall, rates fell 1.7% in 2012. In the previous two years, they dipped 0.5% and 0.2%, respectively, the October report said. The result is a continuing "softening" of the medical liability insurance market in the last several years, characterized by declining rates and low returns on investment for insurers.

"No one really knows how much longer this trend will continue," said *Medical Liability Monitor* Editor Mike Matray.

For now, insurers are seeing strong financial performance despite the downward trend, but that can't continue, Matray said. If rates keep falling as they have in the last five years the industry's financial results eventually will become insupportable.

"In the near term, this is certainly a good market for physicians, because there is plenty of coverage available and pricing is extremely competitive," said Brian Atchinson, president and CEO of the Physician Insurers Assn. of America. "Long term, however, if the market hardens, physicians could be facing conditions similar to those in the late 1990s."

During that time, overall rates were high and coverage was difficult to find in some areas and specialties, Atchinson said.

Even with the market leveling off in recent years, American Medical Association President Jeremy A. Lazarus, MD, said physicians are still paying too much.

"The AMA continues to work for proven reforms to rein in the broken medical liability system, reduce the growth of health care costs and preserve patients' access to medical care," Dr. Lazarus said. "Five years of little or no decreases in premiums have not offset the magnitude of increases that occurred prior to 2008 during this crisis. We are committed to testing alternative reforms, such as safe harbors for the practice of evidence-based medicine, to determine if these innovations can improve patient care and reduce costs."

Physicians face fewer claims

Although the average cost to defend claims has risen in recent years, the number of claims has fallen significantly, said Rob Francis, chief operating officer of the Doctors Company. He and other industry experts say the number of claims filed is about half what it was a decade ago. National aggregate numbers are not available.

"At this point, the impact on physicians has been generally positive, since they have seen their premiums come down to 2003 levels," Francis said.

HIGHEST AND LOWEST COSTS FOR LIABILITY INSURANCE PREMIUMS

The medical liability market nationwide held steady in 2012, with overall rates dropping a scant 1.7% from the previous year. But rates that physicians pay vary greatly, depending on the state, county, specialty, insurer and plan.

HIGHEST INTERNIST RATES	2011	2012	CHANGE
Florida (Dade County)	\$47,731	\$47,731	0.0%
Illinois (Cook, Madison and St. Clair counties)	\$40,865	\$40,865	0.0%
Michigan (Wayne and Oakland counties)	\$35,139	\$35,139	0.0%
Connecticut	\$34,700	\$34,700	0.0%
New York (Nassau and Suffolk counties)	\$33,041	\$34,032	3.0%

HIGHEST GENERAL SURGEON RATES	2011	2012	CHANGE
Florida (Dade County)	\$190,926	\$190,926	0.0%
New York (Nassau and Suffolk counties)	\$120,228	\$127,233	5.8%
Illinois (Cook, Jackson, Madison, St. Clair and Will counties)	\$127,083	\$127,083	0.0%
Michigan (Wayne County)	\$142,731	\$121,321	-15.0%
Nevada (Clark County)	\$118,125	\$118,125	0.0%

HIGHEST OB-GYN RATES	2011	2012	CHANGE
New York (Nassau and Suffolk counties)	\$206,913	\$204,684	-1.1%
Florida (Miami and Dade counties)	\$201,808	\$201,808	0.0%
Illinois (Cook, Madison and St. Clair counties)	\$177,441	\$177,441	0.0%
Connecticut	\$170,389	\$170,389	0.0%
Nevada (Clark County)	\$168,750	\$168,750	0.0%

LOWEST INTERNIST RATES	2011	2012	CHANGE
Nebraska*	\$2,381	\$2,381	0.0%
Minnesota	\$3,375	\$3,375	0.0%
South Dakota	\$3,697	\$3,697	0.0%
Wisconsin	\$3,946	\$3,946	0.0%
California (14 counties)	\$3,988	\$3,988	0.0%

LOWEST GENERAL SURGEON RATES	2011	2012	CHANGE
Nebraska*	\$8,095	\$8,095	0.0%
Minnesota	\$11,306	\$11,306	0.0%
South Dakota	\$12,569	\$12,569	0.0%
Wisconsin	\$13,813	\$13,813	0.0%
Kansas*	\$17,089	\$14,400	-14.0%

LOWEST OB-GYN RATES	2011	2012	CHANGE
Nebraska*	\$14,286	\$14,286	0.0%
California (14 counties)	\$15,484	\$15,484	0.0%
Minnesota	\$16,449	\$16,449	0.0%
Wisconsin	\$18,154	\$18,154	0.0%
South Dakota	\$19,946	\$19,282	-3.3%

* RATE DOES NOT INCLUDE PAYMENT TO STATE PATIENT COMPENSATION FUND.
SOURCE: MEDICAL LIABILITY MONITOR ANNUAL RATE SURVEY, OCTOBER

reforms and an increased focus in health care on safety and risk management, he said.

With the costs of handling a claim rising, some attorneys are being more selective about which cases to pursue, Karls said.

Other factors contributing to declining premiums include manageable increases in the costs paid to plaintiffs, Matray said. The number and total value of medical liability payments made on behalf of physicians declined for the eighth consecutive year in 2011, according to the National Practitioner Data Bank. That means insurers are not having to pay as much to defend or settle claims as they did in the past, Matray said.

The *MLM* survey examined annual rates as of July 1 for mature claims-made policies with \$1 million/\$3 million limits for internists, general surgeons and ob-gyns.

"The industry is experiencing historically low claims frequency, and the dollar value of malpractice payments is at an all-time low," Matray said.

As a result, the medical liability insurance market has become increasingly competitive.

Many companies are offering physicians schedule credits for things such as completing risk management courses and being claims-free, Matray said. Thirty percent of companies in this year's survey said they were offering new credits, which can significantly reduce the cost of coverage for doctors.

Companies that are members of PIAA also have been effective in recent years by utilizing strategies for better risk management and enhanced patient safety, Atchinson said. "This fact, combined with

"It is critical to watch these trends closely, because a jump in claims frequency, combined with the continued increases in severity, could change rate and marketing conditions swiftly and dramatically," he said.

Although the current trend is good news for most doctors, it can't continue, Karls said. If the soft market lasts too long, insurance companies will lose money, and the solvency of the coverage they offer physicians will be threatened.

Industry observers predict it will be several years before the market hardens and rates will start to rise again.

"The medical professional liability insurance market goes through cyclical hard and soft markets, and that's to be expected," Matray said.

Some states still see high premiums

Even though premiums nationwide are on the decline, rates vary from state to state. Michigan is among the states that continue to have some of the highest premium rates in the country. As a result, the state has struggled to retain physicians and has shortages in many areas, said Michigan State Medical Society President John G. Bizon, MD.

Dr. Bizon attributes many of the state's troubles to a medical liability environment that favors plaintiffs' attorneys. The Michigan Supreme Court has reversed many tort reforms adopted in the 1990s.

In 2010, the Illinois Supreme Court reversed medical liability reforms approved five years earlier. A 2010 survey of Illinois medical residents found that half leave the state after completing training.